

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY) MDL No.1456
AVERAGE WHOLESALE PRICE) Master File No. 01-CV-12257-PBS
LITIGATION) Subcategory No. 06-CV-11337-PBS
)
) Judge Patti B. Saris
)
THIS DOCUMENT RELATES TO:) Magistrate Judge Marianne B. Bowler
<i>United States of America ex rel. Ven-A-Care of</i>)
<i>the Florida Keys, Inc., et al. v. Boehringer</i>) Master Docket No. 6207
<i>Ingelheim Corporation, et al.,</i> Civil Action No.)
07-10248-PBS)
)

**DECLARATION OF JAMES J. FAUCI
SUBMITTING EXHIBITS IN SUPPORT OF PLAINTIFF'S
MOTION FOR PARTIAL SUMMARY JUDGMENT AND IN
OPPOSITION TO THE ROXANE DEFENDANTS' MOTION
FOR PARTIAL SUMMARY JUDGMENT**

I, James J. Fauci, do hereby declare as follows:

1. I am an Assistant U.S. Attorney in the Office of the United States Attorney, District of Massachusetts. I am a member in good standing of the bar of this Court.
2. On behalf of the plaintiff United States of America, I am submitting with this declaration Exhibits in support of the United States' Motion For Partial Summary Judgment. In addition, I am submitting with this declaration Exhibits referenced in the Response of the United States to the Roxane Defendants Corrected 56.1 Statement of Undisputed Material Facts In Support of the Roxane Defendants' Motion for Partial Summary Judgment.
3. The following exhibits are true and correct copies of the materials described:

1.	Deposition of Mark Shaffer, May 21, 2008, selected pages
2.	Deposition of Sheldon Berkle, January 27, 2005, selected pages
3.	Declaration of Simon Platt (filed under seal)
4.	Deposition of Christine Marsh, March 2, 2005, selected pages
5.	Deposition of Edward Tupa, January 31, 2003, selected pages
6.	Deposition of Judith Waterer, April 1, 2003, selected pages
7.	Deposition of Edward DiPaola, December 1, 2005, selected pages
8.	30(b)6 Deposition of Cardinal Health, Inc. (Matthew Erick), June 17, 2008, selected pages
9.	30(b)6 Deposition of McKesson Corporation (Kimbir Leeann Tate), October 15, 2004, selected pages
10.	Exhibit 21 to the Deposition of Mark Shaffer, May 21, 2008
11.	Deposition of Robert Sykora, December 4, 2008, selected pages
12.	Deposition of Richard Feldman, November 17, 2004, selected pages
13.	Deposition of Thomas Russillo, January 8, 2009, selected pages
14.	Intentionally Omitted
15.	Deposition of Kay Morgan, August 27, 2007, selected pages
16.	Deposition of Kay Morgan, November 30, 2007, selected pages
17.	Deposition of Kay Morgan, January 11, 2005, selected pages
18.	Intentionally Omitted
19.	Deposition of Leslie Paoletti, November 30, 2005, selected pages
20.	Deposition of Judith Waterer, October 24, 2001, selected pages
21.	January 7, 2000 Letter from Leslie Paoletti to Red Book Re: Roxane Product Listing (Red Book 14071)
22.	Deposition of Lesli Paoletti, September 20, 2005, selected pages
23.	September 7, 2000 Letter from Richard Feldman to First Data Bank (RLI-AWP-00000447)
24.	Deposition of Lesli Paoletti, November 9, 2004, selected pages

25.	30(b)6 Deposition of Boehringer Ingelheim Pharmaceuticals, Inc. (Gregg Ciarelli), July 25, 2007, selected pages
26.	October 11, 1996 Interoffice memo from Judith Waterer to Edward Tupa (RLI-AWP-00431274)
27.	30(b)6 Deposition of Roxane Laboratories (Judith Waterer), May 9, 2007, selected pages
28.	Deposition of Sheldon Berkle, October 31, 2008, selected pages, and Exhibits 7 and 8
29.	Exhibit 7 to the Deposition of Thomas Via, October 18, 2005
30.	Deposition of Mark Pope, April 14, 2003, selected pages
31.	Deposition of Edward Tupa, November 10, 2005, selected pages
32.	Deposition of Thomas Via, April 2, 2003, selected pages
33.	Fax from Edward Tupa to Sheldon Berkle, Re: Ipratropium Bromide UVD Generic Launch in Home Health Care Market (RLI-AWP-00299557)
34.	January 26, 1996 Letter from Mark Pope to Edward Tupa (RLI-AWP-00087617)
35.	February 13, 1996 Letter from Mark Pope to Edward Tupa (RLI-AWP-00087612)
36.	March 4, 1996 Letter from Mark Pope to Edward Tupa (RLI-AWP-00087600)
37.	February 23, 1996 Letter from Mark Pope to Edward Tupa (RLI-AWP-00087598)
38.	Deposition of Thomas Via, October 18, 2005, selected pages.
39.	September 1999 HCFA transmittal (No. AB-99-63)
40.	Exhibit 6 to the Deposition of Thomas Via, October 18, 2005
41.	May 10, 1996 New Product, Price, Package Information for Ipratropium Bromide Inhalation Solution UVD (RLI-AWP-00074015)
42.	Exhibit 8 to the Deposition of Thomas Via, October 18, 2005
43.	April 22, 1996 New Product Announcement: Ipratropium Inhalation Solution UVD ([RLI-AWP-00430904])
44.	May 28, 1996 New Product Announcement: Ipratropium Bromide Inhalation Solution 0.02% UVD (RLI-AWP-00068016)

45.	May 30, 1996 New Product Announcement: Ipratropium Bromide Inhalation Solution 0.02% UVD (RLI-AWP-00175991)
46.	January 20, 1997 Letter from Gerald Walsh to Wholesale Customer (RLI-AWP-00272250)
47.	December 1, 1997 Price Change Announcement from Richard Feldman to Smith Drug Company Pharmaceutical Buyer (RLI-AWP-00263096)
48.	Exhibit 653 to the Deposition of Edward Tupa Deposition, January 31, 2003
49.	Exhibit 11 to the Deposition of Thomas Via, October 18, 2005
50.	Exhibits 7 and 8 to the Deposition of Deborah Kutner, December 9, 2008
51.	April 29, 1999 Letter from Kelli Self to John Murphy (Meijer, Inc.) (RLI-AWP-00132083)
52.	May 27, 1999 Letter from Kelli Self to Karen Bilacic (Cardinal Health, Inc.) (RLI-AWP-00123600)
53.	Exhibit 4 to the Deposition of Deborah Kutner, December 9, 2008
54.	Exhibit 5 to the Deposition of Deborah Kutner, December 9, 2008
55.	Exhibit 51 to the Deposition of Judith Waterer, October 25, 2001
56.	July 1998 Monthly Report from Judith Waterer (RLI-AWP-00316336)
57.	Hydromorphone HCL AWP Increase Proposal (RLI-AWP-00075335)
58.	August 19, 1998 New Product, Price, Package Information for Hydromorphone HCL (RLI-AWP-00101252)
59.	June 16, 1999 Letter from Kelli Self to Karen Bilacic (Cardinal Health, Inc.) (RLI-AWP-00067752)
60.	February 16, 1996 New Product, Price, Package Information for Azathioprine Tablets USP (RLI-AWP-00101219)
61.	February 16, 1996 New Product Announcement for Azathioprine (RLI-AWP-00077298)
62.	February 19, 1996 Marketing Memo from Alex Dusek, Re: Azathioprine (RLI-AWP-00361407)
63.	November 25, 1996 Interoffice Memo from Judith Waterer to Edward Tupa, Re: Azathioprine Price Increase Analysis (RLI-AWP-00077295)
64.	Exhibit 18 to the Deposition of Thomas Russillo, January 8, 2009
65.	Deposition of Colin Carr-Hall, December 12, 2008, selected pages

66.	Deposition of Deborah Kutner, December 9, 2008, selected pages
67.	Exhibit 12 to the Deposition of Deborah Kutner, December 9, 2008
68.	August 24, 1999 Letter from Kimberly Storck to Janet Penner (Amerisource Select) (RLI-AWP-00134265)
69.	August 31, 1999 Letter from Kelli Self to John Ziebell (Walgreens) (RLI-AWP-00122735)
70.	September 7, 1999 Letter from Kelli Self to Janet Penner (Amerisource Select) (RLI-AWP-00134752)
71.	Exhibit 20 to the Deposition of Thomas Russillo, January 8, 2009
72.	30(b)6 Deposition of Roxane Laboratories (Judith Waterer), July 24, 2007, selected pages
73.	Exhibit 22 to the Deposition of Thomas Russillo, January 8, 2009
74.	September 28, 1999 Letter from Kimberly Storck to Sandy Greco (Kinray-A-Source) (RLI-AWP-00190125)
75.	Exhibit 16 to the Deposition of Deborah Kutner, December 9, 2008
76.	Exhibits 56 to the Deposition of Lesli Paoletti, November 10, 2004
76A	Exhibit 57 to the Deposition of Lesli Paoletti, November 10, 2004
76B	Exhibit 58 to the Deposition of Lesli Paoletti, November 10, 2004
77.	Deposition of Lesli Paoletti, July 26, 2007, selected pages
78.	Deposition of Lesli Paoletti, November 10, 2004, selected pages, and Exhibit 64
79.	Deposition of Judith Waterer, November 28, 2005, selected pages
80.	Exhibit 24 to the Deposition of Thomas Russillo, January 8, 2009
81.	April 2000 National Accounts Monthly Reports (BOEH02708428)
82.	Exhibit 25 to the Deposition of Thomas Russillo, January 8, 2009
83.	Exhibit 26 to the Deposition of Thomas Russillo, January 8, 2009
84.	Exhibit 8 to the Deposition of Robert Sykora, December 4, 2008
85.	Exhibit 28 to the Deposition of Thomas Russillo, January 8, 2009
86.	Exhibit 19 to the Deposition of Mark Shaffer, May 21, 2007

87.	Exhibit 7 to the Deposition of Mark Shaffer, May 21, 2007
88.	Exhibit 3 to the Deposition of Edward Tupa, November 10, 2005
89.	January 12, 1998 Letter from Dan Smith to Gary Ellexson, Re: Oramorph SR Price Increase of 0.5% (RLI-AWP-00166209)
90.	January 11, 1999 Email from Craig Russell, Re: Oramorph SR Price Increase (RLI-AWP-00165405)
91.	Exhibit 17 to the Deposition of Mark Shaffer, May 21, 2007
92.	Exhibit 23 to the Deposition of Mark Shaffer, May 21, 2007
93.	Exhibit 12 to the Deposition of Mark Shaffer, May 21, 2007
94.	Exhibit 20 to the Deposition of Mark Shaffer, May 21, 2007
95.	New Product Introduction for Roxicodone (RLI-AWP-00119191)
96.	30(b)6 Deposition of Roxane Laboratories (James McIntyre), February 2, 2009, selected pages
97.	Exhibit 35 to the Deposition of Sheldon Berkle, October 31, 2008
98.	Exhibit 36 to the Deposition of Sheldon Berkle, October 31, 2008
99.	Distribution Workshop Slide-show from Robert Sykora (BOEH01301724)
100.	Roxicodone 15mg, 30 mg, Profit Calculator (RLI-AWP-00161966)
101.	Exhibit 22 to the Deposition of Mark Shaffer, May 21, 2007
102.	May 17, 2000 Letter from Kimberly Storck to Amelia Tillman (Preferred Pharmacy Inc. C/o PPSC) (RLI-AWP-00217991)
103.	April 13, 2000 Email from Dawn Gordon to Carrie Lark, Re: ANDA Offers, April 13, 2000 (RLI-AWP-00137261)
104.	January 4, 2001 Letter from Kimberly Storck to Dan Movens (Anda Generics, Inc.) (RLI-AWP-00136577)
105.	September 19, 2000 Letter from Kimberly Storck to Dan Movens (Anda Generics, Inc.) (RLI-AWP-00137333)
106.	July 12, 2000 Letter from Kimberly Storck to Dan Movens (Anda Generics, Inc.) (RLI-AWP-00137428)

107.	July 20, 2000 Email from Judith Waterer to John Powers (RLI-AWP-00293151)
108.	Exhibit 253 to the Deposition of Richard Feldman, June 25, 2002
109.	November 1997 Inside Sales Department Monthly Report (BOEH04556178)
110.	November 14, 1995 Interoffice memo from Joseph E. Ashey, Re: Medicare Regions & Atrovent Solution Reimbursement (RLI-AWP-00300270)
111.	Azathioprine Sales Strategy (RLI-AWP-00084338)
112.	Deposition of Richard Feldman, June 25, 2002, selected pages
113.	Deposition of Jim King, December 3, 2004, selected pages
114.	Deposition of Walter Frederick Duy, December 16, 2008, selected pages
115.	April 12, 2000 Email from James Rowenhorst, Re: Medicare Reimbursement of Combivent UVD (RLI-AWP-00317456)
116.	Exhibit 867 to the Deposition of James Rowenhorst, April 3, 2003
117.	March 7, 2000, Email from Kay Morgan to Richard Feldman, Re: AWP (RLI-AWP-00000435)
118.	November 24, 1997 Meeting Minutes: Roxane Program Implementation Meeting (RLI-AWP-00431282)
119.	November 12, 1997 Meeting Minutes: BU Operations Committee (BOEH01046465)
120.	Exhibit 256 to the Richard Feldman Deposition, June 25, 2002
121.	Exhibit 652 to the Edward Tupa Deposition, January 31, 2002
122.	February 17, 1998 Meeting Minutes: WAC Adjustment and Program Implementation (RLI-AWP-00072643)
123.	Exhibit 855 to the Deposition of Judith Waterer Deposition, April 1, 2003
124.	Exhibit 8 to the Deposition of Thomas Russillo Deposition, January 8, 2009

125.	October 19, 1998 Memo from Lesli Paoletti to Judith Waterer Re: United Dose Liquids Pricing Recommendation (RLI-AWP-00004782)
126.	Exhibit 654 to the Deposition of Edward Tupa Deposition, January 31, 2003
127.	Exhibit 6 to the Deposition of Lesli Paoletti, November 30, 2005
128.	Deposition of James Rowenhost, April 3, 2003, selected pages
129.	December 7, 1999 Email from Leslie Paoletti to James Rowenhorst, Re: Florida Medicaid Reimbursement (BOEH03386435)
130.	30(b)6 Deposition of Roxane Laboratories (Judith Waterer), December 12, 2008, selected pages
131.	February 23, 1998 Email from Michael Kavanaugh to Judith Waterer, re: Overpayment Information (RLI-AWP-00450979)
132.	Exhibit 10 to the Deposition of James Rowenhort, October 7, 2005
133.	Exhibit 17 to the Deposition of Colin Carr-Hall, December 12, 2008
134.	Declaration of Ian Dew
135.	Exhibit 16 to the Deposition of Colin Carr-Hall, December 12, 2008
136.	Declaration of Steven Schondelmeyer
137.	August 13, 1999 Email from Gregg Ciarelli to Richard Feldman, Re: AWP/WAC Pricing Spread Meeting (RLI-AWP-00390920)
138.	Exhibit 5 to the Deposition of Thomas Russillo, January 8, 2009
139.	Deposition of Bruce Vladeck, June 21, 2007, selected pages
140.	Deposition of Nancy-Ann Min DeParle, December 5, 2007, selected pages
141.	1994 NDDF Manual (excerpts)
142.	<i>State Medicaid Pharmacy Payment and Their Relation to Estimated Costs</i> (Published in Health Care Financing Review) (Spring 1994)
143.	Roxane Laboratories Wholesaler Source Program B Level (Sole Source) Participation (RLI-AWP-00178919)

144.	Deposition of Patricia Kay Morgan, November 13, 2002, selected pages
145.	Declaration fo Sue Gaston
146.	Deposition of Sue Gaston, March 19, 2008, selected pages
147.	Deposition of Sue Gaston, January 24, 2008, selected pages
148.	Deposition of Arnold Shapiro, October 3, 2007, selected pages
149.	Deposition of Paul Jeffrey, June 14, 2007, selected pages
150.	Deposition of Gary Gilmore, July 26, 2007, selected pages
151.	October 30, 2003 Letter from Joseph DeCapua to Martha McNeil (Texas Department of Health), Re: AMP Prices (RLI-AWP-00102144)
152.	New Product Announcement: Ipratropium Bromide Inhalation Solution 0.02% UVD (RLI-AWP-00069903)
153.	May 20, 1998 Memo from David Lanzillotta to John Powers, Re: Novation Bid Analysis (RLI-AWP-00153120)
154.	Novation Pharmacy Purchasing Program 2001 Invitation to Bid (Appendix A: Novaplus Requirements and Specifications) (BOEH04393944)
155.	March 1, 2004 Novation: Phase 3: Request for Pricing Quotations and Online Bid System (RLI-AWP-00127471)
156.	National Accounts Monthly Reports (August 1998) (BOEH00138415)
157.	National Accounts Monthly Report (December 1998) (BOEH01046832)
158.	May 3, 1999 New Product, Price, Package Information for Ipratropium Bromide NovaPlus (RLI-AWP-00425586)
159.	May 1999 Letter from Richard Feldman to Wholesaler, Re: Novation, LLC Agreement Announcement, (BOEH01127177)
160.	September 19, 2000 Letter from John Powers to Susan Norvell (Novation, LLC) (RLI-AWP-00148185)
161.	October 1, 1999 Email from Judy Waterer to Thomas Murphy (BOEH01653615)

162.	September 13, 2000 Email from Thomas Via to John Powers and Judy Waterer, Re: NovaPlus Meeting (RLI-AWP-00451166)
163.	Declaration of Robin Stone
164.	30(b)6 Deposition of Palmetto (Robin Stone), February 29, 2008, selected pages
165.	30(b)6 Deposition of AdminiaStar Federal (Cheryl Eiler), August 26, 2008, selected pages
166.	February 2000 HHS OIG Report, “ <i>DMERCs—Meeting HCFA’s Objectives</i> ,” OEI-04-97-00330,
167.	30(b)6 Deposition of Administar Federal (Cheryl Eiler), August 27, 2008, selected pages
168.	30(b)6 Deposition of CIGNA (Carolyn Helton), March 13, 2008, selected pages
169.	30(b)6 Deposition of Palmetto (Robin Stone), February 28, 2008, selected pages
170.	30(b)6 Deposition of CIGNA (Paula Sue Walker), March 12, 2008, selected pages
171.	Red Book for Windows Product Information Screen Print-Outs
172.	Deposition of Jerry Wells, May 25, 2004, selected pages
173.	Hawaii Administrative Rules, Title 17, Department of Human Services. Chapter 1739.1
174.	Drug Reimbursement (7 AAC § 43.591(c))
175.	February 27, 2001 Transmittal and Notice of Approval of State Plan Material For: Health Care Financing Administration
176.	Deposition of Paula Avarista, December 4, 2008, selected pages
177.	Deposition of Bruce Vladeck, May 4, 2007, selected pages
178.	Deposition of David Tawes, April 24, 2007, selected pages
179.	Deposition of Diedre Duzor, March 26, 2008, selected pages

180.	September 10, 1999 email from Anthony Tavolaro (RLI-AWP-00000438)
181.	Deposition of Thomas Scully, May 15, 2007, selected pages

I swear under the penalties of perjury that the foregoing statements are true and correct.



James J. Fauci
Assistant U.S. Attorney

Executed this 24th day of July, 2009